

ACTION FORM

PROCEEDING Council Meeting	
DEPARTMENT OF ORIGIN: Town Hall	DATE SUBMITTED: 09/25/2020
PREPARED BY: Terry Tieman	
SUBJECT: Public Comment Portion of the Town Council Meeting–FOIA Considerations and Council Response	
REFERENCE:	
RELATED PROJECT:	
REVIEWED BY: Terry Tieman	
EXHIBITS: Website Information	
EXPENDITURE REQUIRED:	AMOUNT BUDGETED:
FUNDING SOURCE (Dept./Page in CIP & Budget):	
TIMETABLE:	
RECOMMENDED ACTION: Review and discussion	

BACKGROUND AND ANALYSIS

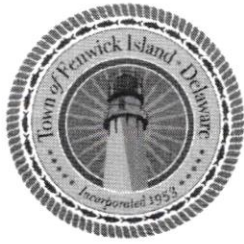
We have recently been asked how and why the Freedom of Information Act prohibits Council from responding to public comments at a meeting.

The Public Comment period is an essential part of our Town Council meetings. It is a time that Council extends the opportunity to the general public to share their thoughts, comments, and concerns. In the past, public comment periods have resulted in dialogue between the Council and the general public. Some of these discussions have become substantive and were about topics such as zoning issues. This was concerning and so we sought information and guidelines on how the public comment period should be conducted from Town Solicitor Schrider–Fox.

Those suggestions included:

- Establish a specific time period – we allow 30 minutes total for public comment.
- Set a time limit for each individual to speak and stick to it – we allow two minutes.
- Do not allow speakers to give their time to others.
- Review the guidelines at the beginning of each comment period.
- Explain that Council will not engage in dialogue with the public at this time.

The attached document outlines why Council is not at liberty to engage in dialogue at the time of public comments.



The Town of Fenwick Island

800 Coastal Highway, Fenwick Island, DE 19944-4409
302-539-3011 ~ 302-539-1305 fax
www.fenwickisland.delaware.gov

Public Comment Segment of the Council Meeting

Prepared September 2, 2020

How and why does FOIA prohibit Council from responding to public comments at the meeting?

There is not a specific section of FOIA that expressly prohibits this. The guidance regarding matters raised during public comment and the fact that they should not be discussed comes from Attorney General (AG) opinions construing FOIA and ties into the FOIA requirement that meetings and what will be discussed at meetings be properly noticed.

These AG opinions essentially say that members of the public, exercising their First Amendment rights, can raise all sorts of issues and topics during a public comment portion of a meeting. If the issue or topic raised was not specifically noticed for public discussion on the meeting agenda, then there must be a compelling reason why discussion cannot wait until a later meeting to allow for proper notice under FOIA. This way, all interested parties to the issue or topic raised are informed about and given the opportunity to observe and/or participate in the discussion.

In the past, some public comments resulted in substantive discussions and question/answer sessions about hot topics. In the recent past, the hotel or other zoning issues have usually been the hot topics raised during public comment. The hotel is considered a substantial matter, as are most issues involving zoning.

The AG opinions do allow for discretion in responding to simple questions or making announcements regarding future events. Exercising this kind of discretion can be tricky. Accordingly, pursuant to advice from our attorney, the Council is taking a cautious approach by receiving comments or information presented during public comment and placing the issue or topic raised on a later agenda if the Town believes it warrants further discussion or action.

If you have questions or concerns regarding this information, please contact Teresa Tieman, Town Manager at 302-539-3011 ext. 203.